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TO: AF/C - Ambassador Render
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FROM: L/AF - Joan Donoghue ~~gma~~

SUBJECT: Rwanda Commission of Inquiry

Summary. As part of a strategy to persuade Government forces and the RPF to agree to a ceasefire, the United States could propose the establishment of a commission of inquiry to evaluate the facts related to (1) the crash of the plane carrying President Habyarimana and (2) the communal violence. My assumption is that the primary U.S. goal would be to achieve agreement to a mechanism as one device to induce a ceasefire.

In shaping the U.S. position, it must be recognized that any outcome from a commission could itself contribute to instability in Rwanda and Burundi. These risks would depend on the conclusions of the inquiry and on its timing, neither of which can be predicted.

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Commissions of inquiry that seek to "find facts" are a longstanding feature of international dispute settlement. They have also been used in intranational disputes (e.g., the El Salvador "Truth Commission"). (An excerpt from the report of the Truth Commission, which includes its mandate, is attached at Tab A). The issues that need to be considered in establishing such a commission include:

- (a) what is the goal of establishing the commission, both for the USG and for the parties to a dispute?
- (b) under what auspices would the commission operate?
- (c) what is the mandate of the commission?
- (d) who will serve on the commission?
- (e) what procedures will the commission follow?
- (f) how will the work of the commission be financed?

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If the establishment of a commission of inquiry emerges as a possible element of a new peace agreement, the United States will want to ensure that the details surrounding such a commission are not used by either party as a pretext to refuse to come to closure on a renewed peace agreement. With respect to each of the issues discussed below, therefore, one U.S. objective will be to find formulations that provide enough specificity that the parties will accept them, but that defer resolution of details to later phase.

The Goal of the Commission. For the United States, as noted above, the primary goal would be acceptance of the establishment of a commission as one means of inducing the parties to agree to a ceasefire. This goal suggests that it is in the United States interest to promote mechanisms that are simple and that defer decisions on many of the details (e.g., membership on the commission and procedures). The Commission of Inquiry established by the Security Council with respect to Somalia (Tab B) followed this model. The U.S. goal was to establish the mechanism,

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[redacted] In that case, a Security Council resolution defined the mandate of the commission in a single clause, left the selection of the members to the Secretary General and left the procedures to be set by the commission.

From the standpoint of the parties, the Somalia model may be unacceptably vague, simply because they have a greater interest in the outcome of the inquiry. They could react negatively to a proposal that defers many of the details. If there is an institution, entity or individual who has the trust of both parties, however, the parties might be willing to leave some of these issues for such an entity. Suspicion could also be allayed by addressing certain details (whichever are of greatest concern to the parties) in the initial agreement.

Auspices for a commission. Given the U.S. goal, the single most important test for the identifying options for institutional auspices of the commission is that the two parties trust it enough to agree to it. Technical competence and efficiency are less important. Those who know Rwanda are certainly in a better position to speak to the parties views than am I. For starters, however, the following institutional devices are available:

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(1) The Security Council could establish a commission, as in Somalia.

(2) The OAU could establish a commission, perhaps under the auspices of the dispute resolution mechanism.

(3) A nongovernmental organization could play the role of institutional host. In Angola, the Vatican's Sant Egidio (sp?) from time to time has expressed an interest in hosting peace discussions.

(4) An ad hoc commission could be established. If one or both of the parties does not trust an established institution, an ad hoc commission may be necessary. An agreement establishing such a commission could specify the participants. Funding and institutional support for an ad hoc commission might be more complicated.

(5) With respect to the plane crash, it is conceivable that ICAO could play a role. (I understand that the Belgians have requested an ICAO investigation into the crash). Because the plane appears to be a "state aircraft," however, ICAO mechanisms may not be available. If there is interest, we can explore this option more fully.

Mandate of a commission. Traditionally, a commission of inquiry is a fact-finding body. A mandate can be drafted that directs the commission to present only a factual report. In practice, however, the line between fact-finding and finger-pointing is fuzzy and a report that is couched in terms of "fact-finding" can also cast considerable blame. (The Somalia report is an example of a factual report that points fingers).

The express mandate of the El Salvador Truth Commission went beyond fact-finding. That Commission was also asked to make recommendations, which it did.

Membership of a commission. In L's experience, the selection of members for international dispute resolution bodies can be both extremely important and extremely time consuming. Procedures for selecting members include the following: (1) a neutral party (e.g., the UN or OAU Secretary General) selects members after consulting with the parties; (2) each of the two parties proposes a list of proposed members and the parties agree to accept anyone on the list; (3) each of the parties nominates a member and the two nominees select a third, "neutral" member (this procedure is common in arbitrations, where the panel must render a decision, and may be less appropriate when the mandate is limited to fact finding).

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Selection by a "neutral" party may be the most efficient process, particularly if the parties seek to agree on the membership before concluding a new peace agreement. If the parties agree to defer selection of members, the efficiency of the process is less important to the United States.

Procedures to be followed by a commission. The UNSC resolution establishing the Somalia Commission left it to the Commission to establish its own procedures. If this option is unacceptable to the parties, the United States or other observers could suggest some terms of reference that define some of the basic parameters for procedures (e.g., obligations of the parties in dealing with the commission; timeline for commission activities). Presumably, the U.S. goal would be to define procedures with sufficient specificity to permit the parties to accept the commission, without allowing an interminable discussion of procedures that impedes progress on other issues.

Funding for a Commission. To my knowledge, no special arrangements were made for funding by the UN of the Somalia Commission of Inquiry. I have not yet inquired into the funding of the El Salvador Truth Commission.

If OAU auspices were chosen, the proposed U.S. contribution to the dispute resolution mechanism could provide one source of funds. As noted above, a disadvantage of an ad hoc commission is that funding of the commission would also be ad hoc.

Next steps. These are some initial thoughts, intended to assist you in considering what sorts of proposals the United States might wish to put forward at an appropriate time. If it appears that further work on this topic would be helpful, please let us know.

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